

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

SCOTT C. BOLTON,

Plaintiff,

v.

STATE OF WASHINGTON,  
DEPARTMENT OF CORRECTIONS,  
OLYMPIC CORRECTIONS CENTER,  
WASHINGTON STATE CORRECTIONS  
CENTER, SERGEANT MATE, JANICE  
PRICE, SUE GIBBS, JOHN ALDANA,  
TRACY HIXON, DON EARLS, and CHAD  
LEE,,

Defendants.

No. C12-5658 BHS /KLS

**REPORT AND RECOMMENDATION**  
**Noted For: November 30, 2012**

Before the Court is Plaintiff's voluntary motion to dismiss without prejudice. ECF No. 19. The undersigned recommends that the motion be granted.

**BACKGROUND**

On July 30, 2012, Plaintiff filed a prisoner civil rights complaint. ECF No. 5. On September 24, 2012, the undersigned recommended that the case be dismissed without prejudice and counted as a strike under 28 U.S.C. § 1915(g) because Plaintiff failed to file an amended complaint to cure deficiencies in his original complaint and has failed to state a cognizable claim pursuant to 42 U.S.C. § 1983. ECF No. 12 (R&R), at 2. On October 17, 2012, Plaintiff filed an amended complaint (ECF No. 16), which was accepted by the District Court in response to the R&R. The Court, therefore, declined to adopt the R&R and referred the amended complaint (ECF No. 16) and pending motion to submit additional exhibits (ECF No. 13) to the undersigned

for consideration. On October 22, 2012, Plaintiff also filed a motion to amend claim. ECF No. 17. On November 2, 2012, Plaintiff filed the instant motion requesting dismissal without prejudice of his claims, pursuant to Rule 41(a)(1). ECF No. 17, at 2.

### DISCUSSION

Rule 41 sets forth the circumstances under which an action may be dismissed. Under Rule 41(a)(1), an action may be dismissed by the plaintiff without order of court:

(i) by filing a notice of dismissal at any time before service by the adverse party of an answer or of a motion for summary judgment, whichever first occurs, or (ii) by filing a stipulation of dismissal signed by all parties who have appeared in the action.

None of the defendants have been served in this matter. The Court should grant Plaintiff's motion (ECF No. 19) and dismiss this action without prejudice. Plaintiff's pending motions (ECF Nos. 13 and 17) should be denied as moot.

### WRITTEN OBJECTIONS

Pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal Rules of Civil Procedure, the parties shall have fourteen (14) days from service of this Report and Recommendation to file written objections. See also Fed. R.Civ.P. 6. Failure to file objections will result in a waiver of those objections for purposes of appeal. *Thomas v. Arn*, 474 U.S. 140 (1985). Accommodating the time limit imposed by Rule 72(b), the clerk is directed to set the matter for consideration on **November 30, 2012**, as noted in the caption.

**DATED** this 7<sup>th</sup> day of November, 2012.



Karen L. Strombom  
United States Magistrate Judge